Appendix A
(Summary Affirmance)

FILED AUG 29 2002

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-12864-HH

MAYU BURR,

Plaintiff-Appellant,

versus

JOHN ASHCROFT,
U.S. Attorney General,

Defendant-Appellee.

On Appeal from the United States District Court for the Middle District of Florida

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BEFORE: BLACK, MARCUS AND WILSON, Circuit Judges.

BY THE COURT:

Appellee's "motion for affirmance without opinion . . .," which is construed as a motion for summary affirmance of the District Court, is GRANTED.

Appellee's motion for extension of time is DENIED AS MOOT.

Appellant's motion to strike Appellee's motion is DENIED.

Appendix B
(Denial of motions for reconsideration, clarification, relief, and oral argument)

FILED OCT 21 2002

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-12864-HH

MAYU BURR,

Plaintiff-Appellant,

versus

JOHN ASHCROFT,
U.S. Attorney General,

Defendant-Appellee.

On Appeal from the United States District Court for the Middle District of Florida

---

BEFORE: BLACK, MARCUS AND WILSON, Circuit Judges.
BY THE COURT:
Appellant's motions for reconsideration, for clarification, for "relief from a lower court judgment . . .," and for leave to amend her statement regarding oral argument, are DENIED.

Appendix C
(Opinion and Order of District Court)

FILED 02 MAR 20

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MAYU BURR,
Plaintiff,

v. CASE NO: 8:01-cv-1308-T-26EAJ

U.S. ATTORNEY GENERAL
JOHN ASHCROFT,
Defendant.
_____/

ORDER

This cause comes before the Court on Defendant's Motion to Dismiss (Dkt. 36) and Plaintiff's Response thereto (Dkt. 39).

Plaintiff is a Japanese national who married a United States citizen ("USC") on April 27, 1998, and has lived with her husband since that date. Although Plaintiff claims to have entered and exited the United States several times after her marriage, her last significant entry into the United States was in September, 1998. After that

date, she submitted various applications and self-petitions to adjust her nonimmigrant status to the following entities or officials: the Immigration and Naturalization Service ("INS") on November 23, 1998; the Attorney General on December 18, 1998; and the President on January 22, 2001. Plaintiff's application and self-petitions have been rejected. The INS has repeatedly explained to Plaintiff that the administratively and legally correct manner in which Plaintiff must seek to have her status adjusted is by application of her USC husband on her behalf.

Plaintiff would like the Court to order the INS to accept her self-petition or application for adjustment of status. She contends that the Immigration and Nationality Act ("INA") Section 204(a)(1)(A)(ii), 8 U.S.C. § 1154(a)(1)(A)(ii), permits an alien spouse of a living USC to self-petition (i.e. petition on her own behalf without sponsorship by her USC spouse) for classification as an immediate relative of the USC spouse when that section is read in conjunction with definitional provisions of INA § 1151 (b)(2)(A)(i). In her Amended Complaint, Plaintiff seeks the following relief: (1) a declaratory judgment on whether INA, Section 204(a)(1)(A)(ii), 8 U.S.C. § 1154(a)(1)(A)(ii), permits an alien spouse of a living USC to "self-petition", i.e. petition on her own behalf without sponsorship by her USC spouse for classification as an immediate relative of the USC spouse; (2) an injunction requiring the INS to (a) commence processing such petition, (b)

issue Plaintiff a work authorization, and (c) provide Plaintiff advanced authorization to travel outside the United States; (3) a writ of mandamus requiring the INS to process the petition and Plaintiff's application for "change of status to permanent resident alien"; and (4) provide additional relief in the form of an order requiring the INS to approve Plaintiff's petition and her application for permanent resident alien status, and to issue documentation to that effect.

Defendant moves to dismiss for lack of subject matter jurisdiction and for failure to state [sic] upon which relief can be granted. Defendant's motion is well-taken and the Court finds that Plaintiff's claims should be dismissed. First, this Court has no subject matter jurisdiction over the Amended Complaint because it concerns a discretionary act of the Attorney General not subject to judicial review under the INS. See INA Section 245, 8 U.S.C. § 1255 (delineating the Attorney General's discretionary power to adjust the status of nonimmigrants) and INA Section 242(a)(2)(B)(i), 8 U.S.C. § 1252(a)(2)(B)(i) (which among other discretionary acts deems "matters not subject to judicial review" to include "any judgment regarding the granting of relief under Section ... 1255 of this title."). The language of these Sections is broad and complete and specifically precludes review of determinations relating to statutory eligibility for discretionary relief.

Second, Plaintiff failed to exhaust her administrative remedies inasmuch as she has never attempted to adjust her status under INA Section 204(a)(1)(A)(i), 8 U.S.C. § 1154(a)(1)(A)(i) (permitting USC sponsors to petition the Attorney General on behalf of aliens). Exhaustion of remedies is a jurisdiction requirement of the INA. See Boz v. United States, 248 F.3d 1299, 1300 (11th Cir. 2001).

ACCORDINGLY, it is ORDERED AND ADJUDGED:

That Defendant's Motion to Dismiss (Dkt. 36) is granted. This case is dismissed, and the Clerk shall enter judgment for the Defendant. The Clerk shall also terminate any pending motions and close this case.

DONE AND ORDERED at Tampa, Florida, on March 20, 2002.

/s/ RICHARD A. LAZZARA
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

Appendix D
(Order of District Court)

FILED 02 MAR 19

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MAYU BURR,
Plaintiff,

v. CASE NO: 8:01-cv-1308-T-26EAJ

U.S. ATTORNEY GENERAL
JOHN ASHCROFT,
Defendant.
_____/

ORDER

UPON DUE CONSIDERATION, the Plaintiff's Motion to Strike Defendant's Opposition (Answer) to Amended Complaint and Defendant's Motion to Dismiss (Dkt. 38) is denied.

DONE AND ORDERED at Tampa, Florida, on March 19, 2002.

/s/ RICHARD A. LAZZARA
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record